adopted, were organized at about the same time. For several years they made no objection to the use of their respective names, and there was no confusion as to their identity, except some confusion of mail. Their purpose was to promote the study of American history, to perpetuate the memory of the men and events of colonial times and preserve the relics of those days. These purposes and aims of the society give a unique aspect to the case. The business character of the associations that had hitherto been interested in legal controversies on the subject of trade-names, had caused the law to develop along a somewhat different line from that pursued by the New York courts in the present case. The damage that would result from the public being misled through a similarity of names, in their dealings with associations of a large and important business character, and the injury to the party aggrieved, has been the controlling influence in the previous decisions of the courts on this subject. We find this well expressed in *Holmes, Booth & Hayden* v. *Holmes, Booth & Atwood Manufacturing Co.*, 37 Conn. 278, and the principle upon which this subject is founded explained in *Celluloid Manufacturing Co.* v. *Celluite Manufacturing Co.*, 32 Fed. 94, as well as in the cases cited in *Central Lard Co.* v. *Fairbank*, 64 Fed. 133. From these authorities we can take it to be the law that a court will interfere by injunction when two business firms have names so similar as to practically perpetrate a fraud on the public, or where the similarity is a source of injury to the party seeking relief in equity.

It is not enough, however, that the public is likely to be misled or that one of the firms is likely to suffer damage. There must be some more definite injury to the party asking for the injunction than what is a mere probability. *Commercial Advertiser* v. *Haynes*, 49 N. Y. Sup. 438. The present case could have been decided on this point alone. There was no injury suffered by the Colonial Dames of the State of New York, except that a few letters addressed to them went astray in the mails. But the court seems to have gone further. They argue that the public is never likely to be misled, so as to be seriously injured, by an association formed for unselfish and patriotic purposes, and that neither association itself can be injured by the other in what it does for the public through motives of generosity and patriotism. They are not money-making concerns. They do not exist for the financial benefit of their members. They need not fear competition, and their objection to a name similar to that they have adopted is dictated more by jealousy than a legitimate desire to stand their ground in the struggle for commercial existence. There is an inconsistency in an association whose object is to voluntarily glorify the deeds and accomplishments of American history, objecting to any one else doing it under the same name. It is even absurd, and we cannot help but agree with the New York courts in the view they have taken of the present case. Hereafter the first question to be asked in cases of restraint for similarity of trade-names will be: "Do the associations concerned fall within the class designated by the court as those existing for 'patriotic and unselfish ends,' or are they ordinary business firms?"

DEAD BODIES—RIGHT TO REMOVE.

In the case of *Toppin* v. *Moriarity*, 44 Atl. Rep. 469, the Court of Chancery of New Jersey renders a decision of some interest, inasmuch as the controversy was of a rather novel and unusual character. The complainant sought by injunction to restrain the defendant from interfering with the removal of the remains of his daughter, who was the wife of the defendant. On her death bed the daughter expressed a wish to be buried in the same plot with her father and mother. To carry out this wish her

father purchased a plot, in which she was buried, with the concurrence of her husband. Very shortly after the burial, her mother being dissatisfied with the situation of the plot, a new plot was obtained by exchange, and plaintiff was about to disinter the body, when defendant raised objections. The plaintiff had caused considerable money to be expended in erecting a monument and in improving the new plot. The defendant had knowledge of the exchange, and also of the improvements being made, but remained silent.

It has long since been established that the common law recognizes no property right in a dead body, 2 *Black. Com.* 429. It is held, however, that the right of burial is a legal right, and that it rests exclusively, in the absence of a testamentary disposition, in the next of kin—that phrase being construed in favor of the surviving husband or wife. *Durell* v. *Hayward*, 9 Gray 248; *Weld* v. *Walker*, 130 Mass. 422; *Larson* v. *Chase*, 47 Minn. 307; *Foley* v. *Phelps*, 1 N. Y. App. Div. 551. And that the husband is obliged to bury his wife. *Patterson* v. *Patterson*, 59 N. Y. 574; *Waesch's Estate*, 166 Pa. St. 204; *Matter of Weringer*, 100 Cal. 345. It has also generally been held that after burial, if all the parties interested have consented thereto, the surviving spouse has no right to remove the body of the deceased against the consent of the next of kin. *Fox* v. *Gordon*, 16 Phila. (Pa.) 185; *Peters* v. *Peters*, 43 N. J. Eq. 140; *Pierce* v. *Swan Point Cemetery*, 10 R. I. 227; *Thompson* v. *Deeds*, 93 Iowa 228. Nor can the next of kin remove the remains against the will of the surviving spouse. *Secor Case*, Alb. L. J. 70.

The peculiarity of the present case consists in that by reason of the action of the wife's parents, it has become necessary to disinter the remains. In cases of this character the question involved resolves itself into one of duty, rather than of right, strictly, so-called. The court, in granting the injunction, proceeds: "Is the husband in a position to prevent the removal? If I am right in the view I have taken, namely, that he is not vested with a right, but charged with a duty, it is apparent that in designating his wife's father's plot as a final resting place of her remains, and in seeing that she was interred there, he did what would ordinarily amount to a complete performance of his duty. If, in consequence of the new situation, a new duty has arisen, he is in the performance of it, subject to the controlling power of this court as the successor to the ecclesiastical court. If nothing else appeared than that, for some reason or other, it was necessary to remove the body, then he, as husband and administrator, would, a controversy arising, be permitted to select another resting place. But there are two additional facts in the case at bar, which it seems to me make it the duty of the husband to allow his wife's body to be buried in the lot prepared for it. These facts are: First, his wife's request that she should be buried with her family, and his assent thereto after her death; second, his conduct in assenting to the exchange of the lots, and in allowing the work upon the new plot to proceed without objection, at great expense to complainant.

As the fundamental conception in the growth of all law should be that which is just and righteous, it seems that the doctrine established by the case under review is a salutory one. Although the resting place of the dead should at all times be considered as sacred, and an interference with the same ought never be tolerated, save for good reason, and then only with the consent of all immediately concerned, yet to allow one to stand by in silence and permit another to resort to large expenditures in the location of another place of sepulcher, and then, actuated by a malevolent spirit, withhold the necessary consent, thus rendering the labors of such other a practical nullity, would not only shock the conscience, but also pervert those rules of human action, so firmly established, which guide man in his daily relations with others."